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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

UNITED STATES OF AMERICA,

Plaintiff,

VS.

YEVGENIY ALEKSANDROVICH
NIKULIN,

Defendant.

NO. CR 16-00440 WHA

San Francisco, California
Wednesday, March 18, 2020

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Reported By: Marla F. Knox, RPR, CRR
Official Reporter

Wednesday - March 18, 2020

12:06 p.m.

P R O C E E D I N G S

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THE CLERK: Calling criminal action 16-440, United States versus Yevgeniy Alexandrovich Nikulin.

Counsel, please state your appearances for the record.

MS. WAWRZYNIAK: Good afternoon, Your Honor, Michelle Kane and Katherine Wawrzyniak for the United States.

THE COURT: Welcome.

MR. GASNER: Adam Gasner and Valery Nechay for Mr. Nikulin who is present.

THE COURT: Welcome to you and to our Defendant. And our interpreters are all set up?

INTERPRETER: We are waiting, Your Honor.

(Pause in proceedings.)

INTERPRETER: We will try it without the equipment, Your Honor, because it is --

THE COURT: Why can't you come to court with equipment that works?

INTERPRETER: The Court Interpreter's Office provides the equipment, and this is what we worked with last time for some reason.

THE COURT: No. Last time one of the units failed, and you had a second backup so we got by; but this time you don't have any units that work?

1 **INTERPRETER:** I have three units. And my only guess
2 is the battery in the interpreter's transmitter is not charged
3 for some reason, but I don't have a spare, Your Honor.

4 **THE COURT:** Do we have spare batteries?

5 **THE CLERK:** We don't. The Jury Office has --

6 **INTERPRETER:** We have one. Just hold on a second.

7 (Pause in proceedings.)

8 **THE COURT:** Who supplies these -- this equipment?

9 **THE CLERK:** The Jury Office does.

10 **THE COURT:** The Jury Office, across the hall?

11 **THE CLERK:** Yes. Do you want me to go ask if they
12 have it?

13 **INTERPRETER:** The doors are locked. I would need two
14 AAA batteries which I don't have.

15 **THE COURT:** AAA?

16 **INTERPRETER:** Sorry --

17 **THE COURT:** Show us what kind you need.

18 **THE CLERK:** I have these.

19 (Pause in proceedings.)

20 **THE COURT:** Is it working?

21 **INTERPRETER:** Yes.

22 **THE COURT:** All right. And our interpreters please
23 make their appearance.

24 **INTERPRETER:** Maria Entchevitch, professionally
25 qualified Russian court interpreter.

1 **INTERPRETER:** Marina Brodskaya, certified professional
2 Russian interpreter, 301188.

3 **THE COURT:** Thank you. Both have been sworn
4 previously.

5 Okay. We are here on a further hearing on motion by the
6 Defense for a continuance of the trial. So let's hear first
7 from the Defense.

8 **MR. GASNER:** Thank you, Your Honor.

9 So I will note that there are a lot of difficulties with
10 proceeding although I want to address first the memorandum of
11 jury responses.

12 I believe that I see three hardships which would not leave
13 us without a jury. There is others that are less clear, and so
14 I'm not passing judgment on those at this point.

15 But I believe juror number 6, who indicates some chronic
16 disease issue and doesn't want to expose him or her -- herself.
17 Based on that health issue, I would probably qualify that as a
18 legitimate hardship. I don't know how much juror number 6
19 would be paying attention to the issues at hand or not.

20 I think juror number 10 is expressing a legitimate
21 hardship.

22 And juror number -- alternate juror number 4. I know that
23 there are others that are probably subject to further inquiry,
24 and I'm surprised that all the jurors didn't get back to us,
25 frankly. That causes me some concern.

1 **THE COURT:** This is the most we got as of about 30
2 minutes ago. Have we gotten anymore?

3 **THE CLERK:** No.

4 **THE COURT:** This all -- up to the minute all the
5 responses we got in reply to our request?

6 **MR. GASNER:** It does give me some pause that everyone
7 didn't respond. I'm actually -- you were not surprised about
8 that. You guessed that that would happen. I was more
9 optimistic that everybody would respond quickly given the
10 circumstances.

11 So I think there were some procedural issues that have
12 come up. The compounding, I will say, of the virus is of some
13 concern. When we spoke telephonically on -- I think it was --

14 **MS. NECHAY:** Monday.

15 **MR. GASNER:** -- Monday, the Court had indicated 3,000
16 cases in the U.S., about 1 in 10,000. That has now doubled. I
17 think it 7,000 as of today. Obviously that is more like 1 in
18 5,000 with the Bay Area and certainly Santa Clara County
19 looking like a hotspot and that's what is being reported.

20 My concern is partially with the jurors' ability to be
21 present and to not let this distract them from the duty at
22 hand.

23 And my other concern is with regard to -- pardon me,
24 Your Honor -- conflict with access to the federal building
25 although I know this Court presumably has the authority to do

1 whatever.

2 **THE COURT:** I'm sorry. I have understood everything
3 except that point. How could there be conflicts?

4 **MR. GASNER:** The general order -- and I'm still
5 interpreting it -- but I think that there is some difficulty
6 within the general order in whether or not this would continue
7 to be a public trial or whether it would not be a public trial.

8 And under the Constitution, I believe Mr. Nikulin has a
9 right to an open and public jury trial. So just looking at the
10 constitutional issues that could be problematic with -- or in
11 conflict with the general order, whether or not the public or
12 press is allowed into the trial.

13 **THE COURT:** I think the press is here today.

14 **MR. GASNER:** They are here today. At least I have
15 seen some of them.

16 **THE COURT:** Yeah, I think two at least.

17 **MR. GASNER:** So not -- I'm not certain as to -- as it
18 moves forward, how that is going to look.

19 So I think that the uncertainty is causing us some
20 concern. I certainly, from a practical matter -- and I can't
21 speak for any other parties -- have some difficulty at the
22 moment in that my own staff is sheltering at home.

23 I believe I could force them to come to work as an
24 exception to the shelter directive, but it does pose some
25 difficulty at the current time with regard to the Defense's

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1 ability to give effective assistance although I might be able
2 to get beyond that; but just bringing up to the Court the types
3 of issues that I'm perceiving as difficult, maybe not
4 insurmountable.

5 So because of the fast moving nature of it, of the
6 situation, I'm inclined to continue to request another short
7 continuance to determine whether or not the issue escalates
8 substantially or whether or not it subsides to a point when
9 Mr. Nikulin can get effective assistance and get his fair
10 trial.

11 I know we are in the middle of it. And I think there
12 would be some difficulties regarding maybe a longer
13 continuance. But just given, you know, the nature of how
14 quickly things are moving, we certainly don't think that we
15 would get through this -- this Thursday and Friday. That puts
16 us over a weekend and then next week.

17 You know, the anticipation is that there could be anything
18 from a -- a general order that everyone quarantine, domestic
19 travel ban, to other issues with regard to people being really
20 ill.

21 And I think -- so those are my maybe somewhat ill-formed
22 ideas as I drove in today and as I thought about it last night.

23 I will also note that I understand specifically with
24 regard to my initial issue that Agent LaTulip, the Secret
25 Service Agent -- that we understand had been in contact with an

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1 individual not involved in this case for a proffer -- a proffer
2 to me means an in-depth interview in a conference room usually
3 for several hours -- I don't know the specifics of this one --
4 then that person to whom -- excuse me -- who was proffering had
5 traveled recently from Europe -- presumably for this proffer --
6 to Washington D.C., and subsequently fell ill with symptoms
7 consistent with COVID-19.

8 And we are awaiting a test of that person to determine
9 whether or not Agent LaTulip could have been infected, and we
10 don't know that yet. So that was an initial issue that I think
11 as of yet is unresolved.

12 **MS. NECHAY:** Can I interrupt?

13 **MR. GASNER:** Sure.

14 **MS. NECHAY:** Your Honor, there is some generalized
15 concerns that the Defense wishes to discuss as well. We
16 anticipated that we might have those tests available in four to
17 six hours and that was back, I believe, on Monday. And
18 unfortunately -- Monday or Tuesday.

19 **THE COURT:** You are blaming -- see, this is
20 irritating. What continuance do you want? Now you are just
21 blaming the Government for not getting the test results --

22 **MR. GASNER:** No, Your Honor.

23 **THE COURT:** -- for a guy in Europe, and you are
24 saying -- you are trying to throw -- do you want a continuance
25 or not?

1 **MR. GASNER:** Yes. Sorry, Your Honor.

2 **THE COURT:** To what date?

3 **MR. GASNER:** That is not my intention to do that at
4 all.

5 **THE COURT:** What date do you want? I'm going to give
6 you a continuance.

7 **MR. GASNER:** Yes, Your Honor.

8 My -- I'm -- pardon me for expressing some uncertainty in
9 these uncertain times. I'm trying to balance the health risks
10 to the parties with my clients due process rights. I thought
11 the trial --

12 **THE COURT:** Of course. We are all trying to do that,
13 and I'm going to defer greatly to your needs; and I will give
14 you almost any date you want within reason. So --

15 **MR. GASNER:** Thank you.

16 **THE COURT:** -- let's pick a date.

17 **MR. GASNER:** So my belief then, Your Honor, the best
18 recommendation I can make given the circumstances is Wednesday,
19 April 8, 2020, when the shelter-in-place order for San
20 Francisco and the other Bay Area counties in which these jurors
21 reside is presumably ended.

22 **THE COURT:** April what? I just didn't hear the date.

23 **MR. GASNER:** 8th.

24 **THE COURT:** That would be the end or the day the trial
25 resumes?

1 **MR. GASNER:** I think it would be wise to schedule that
2 for either the day the trial resumes or for a status regarding
3 the trial if facts have changed.

4 **THE COURT:** Well, April 8 is a Wednesday.

5 **MR. GASNER:** Yes, Your Honor.

6 **THE COURT:** Okay. But let's -- I need to tell the
7 jury something. What date do we tell the jury that the trial
8 would resume? The 9th or the following Monday? What date do
9 you think is right?

10 **MR. GASNER:** I think what I perhaps would recommend
11 would be Monday April 13th with a status, telephonic or
12 otherwise, before this Court on Wednesday, April 8th if not
13 before to determine whether that date is reasonable as the
14 situation changes hopefully for the better.

15 **THE COURT:** I'm going to talk you into April 9th for
16 the status and April 13th to resume the trial.

17 **MR. GASNER:** No objection, Your Honor. Thank you.

18 **MS. NECHAY:** Your Honor, if I may, I just want to
19 clarify. I, in no way, wanted to throw the Government under
20 the bus with my comment.

21 My concern about Agent LaTulip was simply -- is
22 illustrative of the problem that we don't have tests in general
23 that are readily available, and that underscores one of our
24 concerns in continuing in the next couple of weeks.

25 **THE COURT:** That is a very good point, yes. I'm going

1 to come to that point in a minute. All right. Before I make a
2 final decision, I'm inclined to do just what Mr. Gasner has
3 proposed. Have another status on the 9th at Noon and resume
4 the trial on Monday, April 13th unless we decide in the
5 meantime to continue it further.

6 **MS. KANE:** Thank you, Your Honor. The Government is
7 available those dates although we have not, of course, had an
8 opportunity to consult with our witnesses to evaluate their
9 availability for April 13th.

10 **THE COURT:** Well, then -- yes, you can always make
11 another motion to continue it even more. But right now you
12 don't know of anything specific to throw a wrench in the works,
13 do you?

14 **MS. KANE:** No, Your Honor, not as to the dates for the
15 scheduling. We do have some concerns about the continuance and
16 its impact on the Government's case and potential prejudice to
17 the Government. So that's something we can brief to the Court
18 if we feel it is necessary.

19 **THE COURT:** What I would propose to do if the trial
20 does -- let me go down a list of problems that I see.

21 I see several problems. I think if we put the trial out
22 until April 13th, we will run a greater risk of losing jurors
23 to the point that we don't have enough to do the trial. I
24 think that is a substantial risk.

25 And the farther -- not farther -- the further out we put

1 it, the greater that risk.

2 Now, I'm not going to make this public what the jurors
3 said at this time, so that the members of the press who are
4 here won't be able to see this right away because it has
5 private information in there about some of the jurors.

6 But we did receive information, I believe, from 9 of the
7 16, and about two-thirds said in -- came close to saying they
8 could serve. About one-third came close to saying they could
9 not serve or would not want to serve. That is a very rough
10 approximation.

11 Whether we would have 12 to serve and continue the case is
12 possible. We have a fighting chance that that could happen,
13 but that is a risk. So that's number one risk.

14 Number two is that when they returned, I would want us to
15 voir dire them to see if they could continue to be fair and
16 whether the intervening hiatus has prejudiced -- not prejudiced
17 them but prejudiced their ability to be fair in -- or hampered
18 their ability to be fair is what I mean.

19 Third, I would probably give both sides about ten minutes
20 of an opening statement to remind the jury of the evidence thus
21 far. No argument. Just a resuscitation of the evidence.

22 You could talk me into 12 minutes, but both sides would
23 get that. And then we would resume with the evidence.

24 That would give the jury a way to come back up to speed if
25 they -- because of the hiatus.

1 All right. I think there is a fighting chance we could
2 salvage this as a fair trial. There is also a fighting chance
3 we won't be able to do that, but we have invested time in it.
4 I think we should give it a shot and see if we can do it.

5 If not -- and then if you have problems with witnesses --
6 the Government I mean -- you need to bring a separate motion
7 saying: Look at all the pandemonium that the Judge has visited
8 on you with a new schedule and this is not workable. I will
9 give that fair consideration. So far you don't have that. You
10 just don't know.

11 Here is another consideration I have been thinking -- I
12 know you-all too -- about almost nothing but this COVID-19
13 problem for the last few days, and especially the -- you did
14 not mention this -- the Defense -- to your credit you did not,
15 but I will bring it up -- I have a concern that the Defense
16 lawyers are put under an extra burden of having to go to the
17 jail with a high concentration of people and to talk with their
18 client and that could be dangerous for them, their families.
19 And we need to spare them that extra layer of risk if we can.

20 Now, maybe it can't be done. But when I found out that
21 the jail doesn't even have a single test kit, that was
22 irritating.

23 Now, what can the Government do? You are the Government.
24 You ought to be able to call somebody at the Justice Department
25 and say: For Christ sake, we have a trial going on out here.

1 Can't we at least get enough test kits at the jail to find out
2 if the Defendant on trial is healthy?

3 Now, to me he looks healthy; but, you know, he could be
4 asymptomatic. We don't know. And that extra layer of risk
5 that the Defense lawyers are having to undergo worries me.

6 And I would like for us -- one way to avoid it would be a
7 test, and the test could come back and say: Mr. Nikulin was
8 tested yesterday, and he is perfectly healthy or at least he
9 doesn't have the coronavirus.

10 Now, if that were to be the case, then the Defense lawyers
11 would not have that worry. So can't the Government -- I'm
12 asking -- please, can't the Government get some tests at the
13 jail where he is being held?

14 And where are my marshals? I want you -- I want the
15 marshals to ask the jail to do the same thing. In my view it
16 is good to -- you don't even do this yet, I don't think, taking
17 the temperature is something.

18 **MARSHAL:** They are doing that now, Your Honor. The
19 jails are all starting to take temperatures. Just as you said,
20 they don't have test kits.

21 **THE COURT:** The U.S. Marshals -- there used to be TV
22 programs about the U.S. Marshals. You have some say in this
23 country. Get on the phone and get some tests at that jail.
24 Come on.

25 **MS. KANE:** Your Honor, Counsel for the Government did

1 previously inquire into test kits; and none were available as
2 far as we could tell throughout our office or --

3 **THE COURT:** I want you to find -- I want you to do
4 better than that. I think you can. You can get on the phone
5 to the chief people. Tell them that this is not just an
6 ordinary trial. This is a trial that is under way, and we need
7 some test kits out here. How many do we need, two or three, to
8 test Mr. Nikulin?

9 I mean, he stands in a special position because he is on
10 trial now. So as soon as the test kits get here, he ought to
11 be tested right away so the Defense lawyers could know whether
12 they can visit him or not.

13 **MS. KANE:** Your Honor, I will continue to try to
14 obtain information regarding test kits although I'm not sure
15 given the period that appears to be required between a test and
16 a result that a test kit would necessarily.

17 **THE COURT:** You can get the results in, like, 48
18 hours. When President Trump was tested, they had the results
19 in 48 hours.

20 **MS. KANE:** That's correct, Your Honor; however, the
21 Defendant being in custody, what could happen in those 48
22 hours, I just don't know if that wouldn't allay the concerns of
23 Defense Counsel or not.

24 **THE COURT:** Well, it would be better than nothing.
25 And at some point I can't solve every problem. I can only try

1 to solve the major ones, I guess. But --

2 **MS. KANE:** We will make further inquiries.

3 **THE COURT:** It is true -- I have learned through
4 discussions with my colleagues -- that recently the jails have
5 started to take temperatures of everyone and all the inmates
6 that -- and certainly anyone who is transported. And there is
7 some threshold temperature -- I don't know what it is -- like
8 101.4. I'm making that number up -- that if they have that,
9 then they take them to the sick bay.

10 However, you can be asymptomatic and not have a fever at
11 all; but yet still be infected with the virus. So that's
12 only -- you know, we don't -- it is a partial fix, the
13 temperature thing.

14 I think the Marshals are trying their best. We all are
15 trying our best here; but for somebody who is on trial, they
16 ought to have a priority for getting the tests. That would be
17 much better than just guessing at it.

18 Now, what is the story on -- do you have any update for us
19 on the person who was in contact with your witness from the
20 Secret Service?

21 **MS. KANE:** Your Honor, we still don't have the test
22 results, Your Honor. We are told that the Defendant who had
23 some concerns, the person who was tested, has not displayed any
24 further symptoms.

25 (Pause in proceedings.)

1 **THE COURT:** Well, that's as good as far as it goes;
2 but it only goes part of the way. So how about the witness --
3 the Secret Service guy himself, how does he feel?

4 **MS. KANE:** He seems to be fine so far, Your Honor.

5 **THE COURT:** Well, we certainly will learn a lot
6 between now and April 8th on that front. That one will be
7 resolved by then, one way or another.

8 **MS. KANE:** Yes, Your Honor, although -- so are we
9 April 8th for the --

10 **THE COURT:** Did I say -- yes, April 8th is when we
11 will have a status conference.

12 **THE CLERK:** You said April 9th.

13 **THE COURT:** I'm sorry. My apologies. April 9th and
14 let's make it Noon. How is that?

15 **MR. GASNER:** That's fine for the Defense.

16 **MS. KANE:** Fine, Your Honor.

17 **THE COURT:** As information comes in, on either side,
18 any developments that you think we should know about, let us
19 know with a filing so we can stay abreast of the situation.

20 **MS. KANE:** Absolutely, Your Honor.

21 **THE COURT:** Now, I want you two -- Theresa, what is
22 the name of the system that the jurors call into or however
23 they find out what their instructions are? What is the name of
24 that system?

25 **THE CLERK:** I don't know the name. All the jury

1 supervisor told me was that they have a recording for the
2 outbound message.

3 **THE COURT:** Is that the way we would get in touch with
4 them?

5 **THE CLERK:** There is multiple ways. So that is one
6 way. Then they are also sent an e-mail or a text message if
7 they opted in for it.

8 **THE COURT:** Okay. If they did not opt in to
9 anything -- well, let me backup. When you sent the message the
10 other time, how did you send that?

11 **THE CLERK:** I sent the message to the Jury Office, and
12 then they dispersed it.

13 **THE COURT:** How?

14 **THE CLERK:** With their contact information for all the
15 jurors, and then they took message that I sent them and then
16 put it in an e-mail -- text message if the jury opted in for
17 it -- and the --

18 **THE COURT:** The Jury Office did all the -- you didn't
19 do any --

20 **THE CLERK:** No. I just sent them the message.

21 **THE COURT:** "Them," who do you mean?

22 **THE CLERK:** The Jury Office.

23 **THE COURT:** All right. So what would we call that,
24 the recording?

25 **THE CLERK:** Yes.

1 **THE COURT:** Recording. Is there a phone number or
2 something for them to call into?

3 **THE CLERK:** It is just the Jury Office phone number.
4 I'm not sure exactly what number that they gave. I'm assuming
5 it is the Jury Office number.

6 (Pause in proceedings.)

7 **THE COURT:** Just a minute.

8 **MR. GASNER:** Your Honor, may I have a word with my
9 client in the --

10 **THE COURT:** Sure. Of course.

11 (Pause in proceedings.)

12 (Discussion held off the record.)

13 **MR. GASNER:** Thank you, Your Honor. I wanted to make
14 sure Mr. Nikulin was following what was going on and that he
15 didn't have any questions. We seemed to answer what he needed
16 in the short-term although Ms. Nechay might have some
17 additional information.

18 **THE COURT:** Please.

19 **MS. NECHAY:** I do, Your Honor. We have discussed this
20 before. We obviously didn't make this request for the
21 continuance lightly. And due to the fact that Mr. Nikulin will
22 have some extended time of pretrial detention, he has a couple
23 of requests for Your Honor just to make his condition a little
24 bit more bearable right now during this time.

25 So he was requesting for Your Honor to permit him to have

1 a non-wifi game console that has some preloaded games on it
2 like chess and Mario Kart.

3 Pretrial detainees right now are suffering from increased
4 isolation. Of course, most of his family lives in Russia and
5 there are some limits on those expensive phone calls.
6 Additionally, he is not --

7 **THE COURT:** Do you have such a unit that he --

8 **MS. NECHAY:** He just provided me with this request
9 last night, and I looked it up. These are game consoles that
10 certainly we would share that information and our suggestion
11 with --

12 **THE COURT:** I'm okay with that. If the Marshals have
13 any objections -- it can't be connected to the wifi. It can't
14 be connected to the Internet.

15 **MARSHAL:** I mean, it's just whether or not the jail
16 would allow it.

17 **THE COURT:** Yes, but what if I order them to allow it?

18 **MARSHAL:** Sure, that would be fine, Your Honor.

19 **THE COURT:** I want you to run it by the U.S.
20 Attorney's Office. That's okay. I will grant it. You have to
21 buy it. I'm not going to pay for it.

22 **MS. NECHAY:** Absolutely, Your Honor. Apropos, I just
23 want to clarify, the game console I'm speaking of doesn't have
24 the capability even of wifi, so just to assure, Your Honor.

25 And then the second request that Mr. Nikulin made -- just

1 a small comfort during the stressful time -- was to bring him a
2 cheeseburger today, a lunch.

3 So we have provided that. We made sure that the food was
4 handled safely. It was from a location that he does not know.
5 So if Your Honor would permit after we conclude today for him
6 to enjoy his lunch --

7 **THE COURT:** Where would that be?

8 **MS. NECHAY:** We purchased it already. We bought it.

9 **THE COURT:** He is going to have it here or in the
10 lockup? Where?

11 **MR. GASNER:** Wherever the Marshals would permit.
12 Doesn't have to be done in the court, of course. Maybe in the
13 back where he would normally eat lunch.

14 **THE COURT:** Can they do that in the back? Can the
15 marshal let him have his cheeseburger in the back?

16 **MARSHAL:** If they wanted to bring it upstairs, we will
17 put them in separate cells. He can have it upstairs in a cell
18 block. So they just bring it up to the 20th floor; give it to
19 us. I will bring it back to him and he can --

20 **THE COURT:** You will do that personally?

21 **MARSHAL:** Yes.

22 **THE COURT:** And you are?

23 **MARSHAL:** Deputy Sellars (phonetic).

24 **THE COURT:** Please don't let me down. You know, he
25 is -- a cheeseburger is the least we can do. All right.

1 **MS. NECHAY:** Thank you, Your Honor.

2 I think one of the requests we would also make when we
3 return on April 13th, if the Government is going to try to
4 obtain a test result for Mr. Nikulin, then we would also
5 request that they try to obtain a test result just to have in
6 the courtroom in anticipation of if, for example -- it's not
7 inconceivable at some point a juror may have a cough or exhibit
8 a symptom. And I believe it would be wise to nip it in the bud
9 to have a test available immediately if that does happen.

10 Certainly, there has been public reports of very public
11 celebrities and athletes that have been able to procure tests
12 very quickly that are asymptomatic. And certainly we feel
13 because of the importance of this trial and the safety of all
14 of the individuals in this courtroom, that that would be wise
15 to --

16 **THE COURT:** I think that's -- I want you to get a test
17 that we can have available here, the Government. Because if it
18 turns out somebody thinks they might be coming down with the
19 virus, coronavirus, then everybody would be at risk including
20 us too. But I'm mainly concerned about other jurors would then
21 say: Oh, no, I'm sick too.

22 So we would -- the trial would be over at that point
23 unless the Government can show through a test that, no, you
24 just got the ordinary flu. You don't have coronavirus. So
25 please -- please get us one of those tests, so we can do that.

1 **MS. KANE:** Your Honor, I wish that I had the power to
2 do that. As I noted before, we have been unable to locate any
3 sort of tests available for any purpose.

4 **THE COURT:** Tell them --

5 **MS. KANE:** Moreover --

6 **THE COURT:** Tell them the Judge has ordered it.

7 **MS. KANE:** Your Honor, I will do that. Not only that,
8 I don't believe these are tests that can be self administered.
9 I think a medical professional is needed.

10 **THE COURT:** We can do it down in the second floor
11 where I got my flu shot. Everybody goes down there. They are
12 equipped to administer this kind of test.

13 **MS. KANE:** I don't know what their capacity is right
14 now, and I will --

15 **THE COURT:** Their capacity is fine. What they don't
16 have are the kits, the test kits.

17 **MS. NECHAY:** Your Honor, just as a reminder, we do
18 have a juror that is a doctor; self-admitted that she was on
19 the front lines of this issue. I don't know how it would be
20 appropriate or who would reach out to her and perhaps ask her
21 about that issue but, perhaps, that juror --

22 **THE COURT:** What do you mean ask her about that issue?

23 **MS. NECHAY:** Perhaps she has some information about
24 how we can obtain these tests for this courtroom.

25 **THE COURT:** No, no, no. There is no way we are going

1 to -- we are not going to get one of the jurors involved in the
2 public health issues of our courtroom. No. They have got
3 enough on their plate. Their job is to be -- decide the case
4 but not to do that, no. That is our responsibility, not hers.

5 **MS. NECHAY:** Understood, Judge. I was just
6 brainstorming.

7 **MS. KANE:** Thank you, Your Honor. We agree with the
8 Court's position.

9 **THE COURT:** I want you to look at this statement that
10 I have written out, which I'm willing to change and modify.
11 This is what would be told to the jury since it is going to be
12 by telephone. We don't have -- ordinarily, I would bring them
13 in and tell them this in person; but we can't do that under the
14 present circumstances. So we have to make due with the
15 recording.

16 And so here is the statement. Would you read it. I have
17 made some handwritten edits. Teresa, please hand that down.
18 You are going to have to work off the same copies.

19 **THE CLERK:** You want me to hand it --

20 **THE COURT:** Hand it to the lawyers.

21 (Pause in proceedings.)

22 **MS. NECHAY:** The Defense would submit on this proposed
23 statement.

24 **MS. KANE:** Thank you, Your Honor. The language looks
25 fine to the Government as well.

1 **THE COURT:** All right. This is what we are going to
2 do then. Anything else today?

3 **MS. NECHAY:** Nothing from Defense, Your Honor.

4 **MS. KANE:** No, Your Honor, thank you.

5 **THE COURT:** All right. So the -- let me just make an
6 official ruling. The trial was previously continued until
7 tomorrow morning to give us some time to assess our situation.

8 The trial is under way with a jury. Jeopardy has
9 attached.

10 And we are all trying to do our best to save the trial and
11 save the jury so that we don't have a mistrial.

12 And I have decided that the best course of action is to do
13 what the Defense has requested and give a continuance until
14 month April 13th at 7:30 a.m. when the trial will resume with
15 the status conference on Thursday April 9 at Noon.

16 We will advise the jury on Friday, April 10, to report in
17 or give them other instructions.

18 So the trial for tomorrow is postponed pending our
19 developments in this public health emergency.

20 Okay. Can you do that as a minute order, Theresa?

21 **THE CLERK:** I'm sorry?

22 **THE COURT:** Can you write this up as a minute order?

23 **THE CLERK:** Yes, I will.

24 **THE COURT:** All right. I thank you-all. I think we
25 are done; right?

PROCEEDINGS

1 **MR. GASNER:** Yes, Your Honor.

2 **THE COURT:** Mr. Nikulin, enjoy your cheeseburger.

3 Okay. And my instruction -- my interpreters, I'm going to
4 raise something with the Clerk -- with the Jury Office and tell
5 them that they let me down by giving you dead batteries.

6 But please next time check the equipment and make sure it
7 works.

8 **INTERPRETER:** We will do our best, Your Honor.

9 **THE COURT:** Thank you.

10 **MS. WAWRZYNIAK:** Thank you, Your Honor.

11 **MS. NECHAY:** Thank you.

12 (Proceedings adjourned at 12:48 p.m.)

13 ---oOo---

CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Sunday, December 13, 2020

A handwritten signature in blue ink that reads "Marla Knox". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

Marla F. Knox, RPR, CRR
U.S. Court Reporter